

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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*Federal Communications Commission
Office of Secretary*

In the Matter of)
)
Amendment of the Commission's Rules) ET 97-99
to Relocate the Digital Electronic Message)
Service from the 18 GHz Band to the)
24 GHz Band and to Allocate the)
24 GHz Band For Fixed Service)

**PETITION FOR CLARIFICATION
OF
WINSTAR COMMUNICATIONS, INC.**

Pursuant to Section 1.106 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.106 (1996), WinStar Communications, Inc. ("WinStar") hereby submits this Petition for Clarification of the Order released in the above-captioned proceeding.¹ As set forth below, WinStar requests that the Commission clarify (1) the operational parameters of the 24 GHz Digital Electronic Message Service ("DEMS") allocation in light of the fourfold increase in spectrum now available to DEMS licensees formerly authorized in the 18 GHz band, and (2) the relocation and reimbursement rights of 18 GHz DEMS licensees. A number of parties, including the Millimeter Wave Carrier Association, Inc., may be filing Petitions for Partial Reconsideration of the FCC's Order. WinStar would like to confirm that it only seeks Commission action on the instant Petition for Clarification in the event that

¹ Order, ET Docket No. 97-99, 62 Fed. Reg. 24576 (May 6, 1997) ("Order")

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these Petitions for Partial Reconsideration are substantially denied by the Commission.

Statement of Interest

WinStar is a publicly traded company whose stock is traded over the NASDAQ market system (symbol WCII). WinStar is a major license holder in the 38.6-40.0 GHz band (the 38 GHz band). It is utilizing this spectrum asset to build wireless local telephone networks for the transmission of voice, data and video traffic throughout the nation. Over the past three years, WinStar has secured in excess of \$700 million in funding for its network buildout.

WinStar's 38 GHz licenses cover more than one hundred cities with populations exceeding 100,000. In the aggregate, they encompass a population of 172 million. WinStar has licenses in forty-seven of the top fifty most populated metropolitan statistical areas in the United States. It is authorized as a competitive local exchange carrier ("CLEC") in twenty-one jurisdictions and has applications for CLEC status currently pending in seven other jurisdictions. WinStar already has initiated commercial switched service as a wireless CLEC in New York, Chicago, Boston, and Los Angeles. It expects to be operating switched CLEC services in at least eight other major markets by the end of 1997. WinStar, through its several subsidiaries and affiliates, intends to provide local, long distance, Internet and information services to small and medium sized businesses.

WinStar also has received authority to operate as a competitive access provider ("CAP") in thirty-three jurisdictions. WinStar is providing its Wireless FiberSM services

to over forty carrier customers including MCI Communications, Pacific Bell, Teleport Communications, and Ameritech Cellular Services. WinStar's Wireless FiberSM networks are so-named because of their ability to duplicate the technical characteristics of fiber optic cable with wireless 38 GHz microwave transmissions. These high speed communications links have broadband characteristics, allowing for voice, video and data, and are engineered to have a reliability of 99.999 percent.

In late 1996, WinStar acquired Local Area Telecommunications, Inc. ("LOCATE"), which held numerous FCC licenses, including some at 38 GHz. As a result of the LOCATE transaction, WinStar also acquired a number of DEMS authorizations, mostly at 10 GHz. However, the LOCATE rights to one 18 GHz DEMS license also transferred to WinStar.

WinStar now is conducting an internal audit of the license to ensure that the underlying DEMS system is properly constructed and operational. To the extent that the underlying station was not properly constructed, WinStar will perfect the construction and seek any necessary waiver of the FCC's rules. In the meantime, WinStar is an interested party in this proceeding, and submits the instant Petition to request that the Commission clarify the operational parameters of DEMS in light of its recent Order to (1) reallocate the 18 GHz DEMS to 24 GHz, and (2) increase the amount of spectrum available to affected DEMS licensees.

DEMS Licensees Should Be Allowed To Carry Wireless Cable, Mobile and Other Telecommunications Offerings on the Surplus Spectrum Allocated at 24 GHz.

WinStar, as a new 18 GHz DEMS entity, has reviewed the Order released in ET Docket No. 97-99 with great interest, in particular the FCC's decision to relocate DEMS to the 24 GHz band and to quadruple the amount of spectrum licensed to WinStar and other 18 GHz DEMS licensees. WinStar engineering assessments conclude that this substantial increase in spectrum was unnecessary for traditional DEMS operations. Thus, WinStar now seeks clarification as to the expanded utility of the DEMS bands contemplated by the FCC relative to the FCC's decisions to reallocate the 18 GHz DEMS to 24 GHz and to increase fourfold DEMS spectrum holdings.

As noted by the Commission, expanded equipment availability for point-to-multipoint applications has already impacted perceptions about the enhanced utility of DEMS.² Specifically, WinStar believes that it should have the flexibility to operate on this surplus 24 GHz spectrum in any manner consistent with the interference standards set forth in the FCC's rules and regulations. Simply put, it would be inconsistent with the FCC's forward-thinking spectrum utilization policies if licensees were limited in their ability to take full advantage of this spectrum asset.³ WinStar respectfully suggests that the FCC's fourfold increase in spectrum dramatically changes the landscape of the DEMS. Virtually overnight, WinStar has been transformed into a broadband licensee at

² Order at ¶ 8.

³ For example, policies espoused by the Commission in the Wireless Communications Service ("WCS") Report and Order, GN Docket No. 96-228, (adopted February 19, 1997), and the Millimeter Wave Notice

24 GHz. With 40 MHz paired channels in the 24 GHz band, WinStar now has service opportunities it never could consider at 18 GHz. Moreover, use of this spectrum to serve the public should not be constrained by outdated preconceptions regarding the utility of DEMS.

WinStar seeks clarification from the FCC on the scope of permissible communications that can be provided over a broadband 24 GHz DEMS license. Based on the FCC's decision to quadruple WinStar's spectrum holdings, and the recognition that advances in equipment availability can provide new uses for a band of spectrum,⁴ WinStar is exploring a number of different telecommunications offerings in addition to digital electronic messaging. Possible applications include wireless cable, bi-directional video, radio location, geographic partitioning and disaggregation, and mobile applications, e.g., mobile data applications for computer laptop modems in a campus setting and high data bi-directional applications to limited-radius vehicles.

WinStar would be remiss in its duty to its shareholders if it did not leverage its new-found spectrum asset at 24 GHz. As the FCC is well aware, this spectrum has significant commercial value. WinStar simply seeks clarification from the Commission on the breadth of operational flexibility it will be allowed in taking advantage of this unexpected opportunity.

of Proposed Rulemaking, IB Docket No. 97-95 (released March 24, 1997), encourage maximum flexibility of wireless applications within licensed service areas and pre-set interference parameters.

⁴ Order at ¶ 8. For example, Associated Communications, L.L.C.'s use of point-to-multipoint technology has expanded the parameters of "traditional" DEMS operations.

The FCC Must Elaborate on the Relocation and Reimbursement of DEMS Licensees.

Based on recent FCC relocation efforts in other spectrum bands, e.g., the 2 GHz private operational-fixed microwave service and the 800 MHz Specialized Mobile Radio (“SMR”) service, it is clear that the relocation of an entire radio service, such as the 18 GHz DEMS, is a major undertaking. Yet, the Order does not contain sufficient guidelines on relocation of the 18 GHz DEMS. The Commission simply indicates that (1) most incumbent DEMS licensees must cease operations not later than January 1, 2001, (2) all DEMS licenses for the 18 GHz band will be modified to authorize operation in the 24 GHz band,⁵ and (3) “Teledesic has now agreed to reimburse licensees which are required to modify existing equipment in order to operate in the 24 GHz band being offered by the Government.”⁶ WinStar respectfully suggests that the Commission must provide further clarification for DEMS licensees regarding the relocation and reimbursement processes. For example, WinStar seeks clarification on construction requirements at 24 GHz. Is any construction required for a DEMS licensee to properly perfect the 24 GHz portion of its license, or is the fact that the licensee constructed an 18 GHz license sufficient? In addition, will the construction requirements at 24 GHz, if any, change in light of the fourfold increase in spectrum now available to 18 GHz DEMS licensees?

More importantly, the Commission must provide further guidance on the ability of

⁵ Order at ¶ 14.

⁶ Order at ¶ 10 (footnote omitted).

18 GHz DEMS licensees to secure reimbursement for their relocation to 24 GHz. The discussion in this area is sorely lacking. WinStar proposes the following guidelines for reimbursement.⁷ This list is not intended to be exhaustive but merely a baseline for clarifying the reimbursement and relocation rights of 18 GHz DEMS licensees.

- (1) Guaranteed payment of all DEMS relocation costs. This would include engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated DEMS licensee may incur as a result of migration to or operation in the 24 GHz band.
- (2) Reimbursement for all activities necessary for implementing the new facilities, including engineering, frequency coordination and cost analysis of the complete relocation procedure.
- (3) Turn-key relocation, if necessary, and the ability to test a new system for comparability to the existing 18 GHz system. A DEMS licensee will not be required to relocate until its new, comparable, DEMS system is available to it for a reasonable time to make adjustments and ensure a seamless handoff. If within one year after the new facilities are in operation, they are demonstrated by the DEMS licensee to not be comparable to the former facilities, the DEMS licensee must be compensated accordingly or be allowed to relocate back to the 18 GHz band, without incurring an expense.
- (4) DEMS licensees that choose not to relocate to 24 GHz until after the January

⁷ Most of these guidelines were adopted by the Commission in the ET Docket No. 92-9 proceeding in which it established procedures for the relocation of 2 GHz private operational-fixed microwave service licensees.

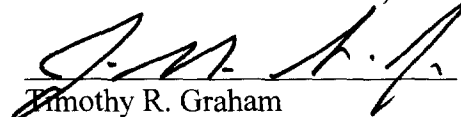
1, 2001 deadline should still be able to secure full reimbursement.

Radio service relocation is a serious matter. WinStar respectfully submits that the FCC must devote the same level of consideration and detail to the relocation and reimbursement rights of 18 GHz DEMS incumbent licensees as it has with incumbent 2 GHz microwave and 800 MHz SMR licensees.

WHEREFORE, THE PREMISES CONSIDERED, WinStar Communications, Inc. requests that the Commission clarify its Order in ET Docket No. 97-99 in the manner set forth above.

Respectfully submitted,

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